

## JOURNAL OF THE HOUSE.

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Thursday, March 9, 2006.

Met according to adjournment, at eleven o'clock A.M., in an Informal Session, with Mr. Donato of Medford in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

God of Forgiveness and Truth, Your gift of Wisdom enables us to comprehend more accurately the legislative and cultural issues which we face as elected leaders in these changing times. Each day we are called upon to address a variety of needs in our diverse constituencies. Your guidance helps us to select the best and them most realistic, perhaps not the most popular, legislative options which are available to us. Inspire us to be guided by Your ways, values and standards as we address our responsibilities and seek out new opportunities which benefit our communities and the people.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

At the request of the Chair (Mr. Donato), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Prayer.

Pledge of  
allegiance.

### *Resolutions.*

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

Resolutions (filed by Mr. Jones of North Reading) congratulating Mr. William "Bud" Warnock on the occasion of his retirement;

William  
Warnock.

Resolutions (filed by Representatives Linsky of Natick and Peisch of Wellesley) recognizing and celebrating the occasion of the "Natick Reds" event at the Bacon Free Library; and

Natick  
Reds.

Resolutions (filed by Mr. Ross of Wrentham) honoring Marion E. Cafferky on her retirement from the Wrentham Board of Health;

Marion E.  
Cafferky.

Mrs. Harkins of Needham, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of the same member, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

### *Petitions.*

Mr. Murphy of Weymouth presented a petition (accompanied by bill, House, No. 4745) of Robert L. Hedlund and others (with the approval of the mayor and town council) that the town of Weymouth be authorized to sell or convey a certain parcel of land held for water supply purposes; and the same was referred to the committee on Municipalities and Regional Government. Sent to the Senate for concurrence.

Weymouth,  
land  
conveyance.

Petitions severally were presented and referred as follows:

Students,  
dropout  
prevention.

By Mr. Canessa of New Bedford, petition (subject to Joint Rule 12) of Stephen R. Canessa and others that the Board of Education to directed to increase the maximum age for attendance of students in the schools of the Commonwealth.

Professional  
licensure,  
regulating.

By Mr. Fagan of Taunton, petition (subject to Joint Rule 12) of James H. Fagan for legislation to require applicants for professional licenses to have satisfied all state tax obligations of such applicants.

Lottery  
funds,  
distribution.

By Mr. Jones of North Reading, petition (subject to Joint Rule 12) of Bradley H. Jones, Jr., and others relative to increasing the distribution of State Lottery funds to the cities and towns of the Commonwealth.

Police  
officers,  
impersonation.

By Mr. Nangle of Lowell, petition (subject to Joint Rule 12) of David M. Nangle and Robert J. Nyman for legislation to increase the penalties for persons convicted for impersonating police officers.

Worcester,  
courthouse.

By Mr. Fresolo of Worcester, petition (subject to Joint Rule 12) of Vincent A. Pedone and John J. Binienda for legislation to designate a certain courthouse in the city of Worcester as the John Vincent Power and Joseph Timothy O'Callahan Courthouse.

Fishing  
gear,  
study.

By Mr. Hynes of Marshfield, petition (subject to Joint Rule 12) of Frank M. Hynes for an investigation and study by the Division of Marine Fisheries relative to the impact of lost or abandoned fishing gear found on the shores of the Commonwealth.

County  
corrections,  
heart law.

By the same member, petition (subject to Joint Rule 12) of Steven W. Backstrom and Frank M. Hynes for legislation to place county correction officers under the "heart law", so-called, of the public employees disability retirement law.

Health  
insurance,  
towns.

By Mr. Jones of North Reading, petition (subject to Joint Rule 12) of Richard R. Tisei and Mark V. Falzone relative to health insurance for employees of counties and municipalities.

Severally, under Rule 24, to the committee on Rules.

#### *Papers from the Senate.*

MWRA,  
Quincy  
land.

A Bill relative to the sale of land in Quincy by the Massachusetts Water Resources Authority (Senate, No. 2190, amended striking by out section 3 and inserting in place thereof the following section:

"SECTION 3. In accordance with subsection (d) of section 9 of chapter 372 of the acts of 1984, the Massachusetts water resources authority, notwithstanding any other general or special law, ordinance or regulation to the contrary, may convey to the city of Quincy, for nominal consideration, a certain parcel of land owned by the authority in the city of Quincy, consisting of approximately 123,625 square feet. The parcel of land, generally located on South street and Cleverly court, is more particularly described as parcel 13 in a plan entitled 'General Dynamics, Quincy and Braintree, Mass.' (consisting of a plan index and 14 drawings numbered 150.011M to 150.151M, inclusive, but excluding 150.081M), dated October 15, 1986, and November 4, 1986, as revised, by New England Survey Service, recorded November 16, 1987 with the Norfolk County registry of deed in plan book 361 as plan no. 1372 of 1987, sheets 1 through 15, and on file with the authority."; and inserting before the enacting clause the following emergency preamble:

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to authorize the Massachusetts water resource authority to dispose of real property in Quincy no longer needed for the waterworks system, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.") (on a petition), passed to be engrossed by the Senate, was read; and it was referred, under Rule 33, to the committee on Ways and Means.

#### *Bills*

Strengthening waterways law enforcement (Senate, No. 546, changed in section 1, in line 2, by striking out the figures "2002" and inserting in place thereof the figures "2004" and, in line 3, by striking out the figure "8" and inserting in place thereof the figure "7") (on a petition); and

Waterways,  
law  
enforcement.

Doubling the penalties for violating speed limits in school zones (Senate, No. 1859) (on a petition);

School  
zones,  
speeding.

Severally passed to be engrossed by the Senate, were read; and they were referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

#### *Reports of Committees.*

Mr. Scaccia of Boston, for the committee on Rules, on the Order relative to authorizing the committee on Public Service to make an investigation and study of certain Senate and House documents concerning active and retired public employees (House, No. 4723) reported, in part, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 3232) of Anthony Petrucci and others (with the approval of the mayor and city council) for legislation to grant retirement credit to certain reinstated teachers employed in the school department of the city of Boston,— and recommending that the same be recommitted to the committee on Public Service. Under Rule 42, the report was considered forthwith; and it was accepted.

Boston,  
reinstated  
teachers.

By Mr. Smizik of Brookline, for the committee on Environment, Natural Resources and Agriculture, asking to be discharged from further consideration of the petition (accompanied by bill, House, No. 3897) of Peter V. Kocot and others relative to an appropriation of funds for protection of the drinking water supply in the western part of the Commonwealth,— and recommending that the same be referred to the committee on Ways and Means. Under Rule 42, the report was considered forthwith; and it was accepted. Sent to the Senate for concurrence in the discharge of the committee.

Western  
region,  
drinking  
water.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill relative to certain insurance benefits for part time elected officials of the town of Norwell (printed in House, No. 4386) be scheduled for consideration by the House. Placed in the Orders of the Day for the next sitting for a second reading.

Norwell,  
elected  
officials.

Under suspension of Rule 7A, on motion of Mrs. Harkins of Needham, the bill was read a second time forthwith; and it was ordered to a third reading.

Milford,  
alcoholic  
beverage  
license.

By Mr. Donato of Medford, for the committee on Steering, Policy and Scheduling, that the House Bill authorizing the town of Milford to grant an additional license for the sale of wine and malt beverages not to be drunk on the premises (House, No. 4722) [Local Approval Received] be scheduled for consideration by the House. Placed in the Orders of the Day for the next sitting for a second reading.

Under suspension of Rule 7A, on motion of Mr. Flynn of Bridgewater, the bill was read a second time forthwith; and it was ordered to a third reading.

Administrative  
procedures.

By Mr. Cabral of New Bedford, for the committee on State Administration and Regulatory Oversight, on Senate, Nos. 1745, 1746, 1757, 1764, 1765, 1770 and 2199 and House, Nos. 3474, 3480, 3491, 3494, 3508 and 3523, an Order relative to authorizing the committee on State Administration and Regulatory Oversight to make an investigation and study of certain Senate and House documents concerning administrative rulemaking, public records, electronic government services and state finance issues (House, No. 4744). Referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

Subsequently Mr. Scaccia of Boston, for said committees, reported, asking to be discharged from further consideration of the order; and recommending that the same be referred to the House committee on Rules. Under Rule 42, the report was considered forthwith; and it was accepted.

Sherborn,  
Farm Pond.

By Mr. Flynn of Bridgewater, for the committee on Bonding, Capital Expenditures and State Assets, on a petition, a Bill to convey certain Commonwealth property consisting of the waters of Farm Pond, its tributaries, and water distribution system to the town of Sherborn (House, No. 3426).

New Bedford,  
state land.

By the same member, for the same committee, on a petition, a Bill relative to certain state owned land located in the city of New Bedford (House, No. 3854).

Peter and  
Marlene  
Childius.

By Mr. Binienda of Worcester, for the committee on Revenue, on a petition, a Bill directing the Commissioner of Revenue to accept a certain application for abatement of taxes (House, No. 2268).

Taxes.

By the same member, for the same committee, on a petition, a Bill relative to household employer withholding obligations (House, No. 2387).

State flag,  
sales tax.

By the same member, for the same committee, on a petition, a Bill exempting sales of the flag of the Commonwealth from sales tax (House, No. 2586).

Ethics  
Commission.

By Mr. Cabral of New Bedford, for the committee on State Administration and Regulatory Oversight, on House, Nos. 3 and 6, a Bill relative to the State Ethics Commission (House, No. 6).

Electronic  
records.

By the same member, for the same committee, on a petition, a Bill relative to electronic record standards (House, No. 4026).

By Mr. Wagner of Chicopee, for the committee on Transportation, on a petition, a Bill relative to regulation of street sweepers (House, No. 2045).

Street  
sweepers.

Severally read; and referred, under Rule 33, to the committee on Ways and Means.

By Mr. Wagner of Chicopee, for the committee on Transportation, that the recommitted Bill to require the use of lights on motor vehicles during any period in which windshield wipers are also in use (House, No. 2084) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Windshield  
wipers,  
use.

By Mr. O'Flaherty of Chelsea, for the committee on the Judiciary, on a petition, a Bill relative to investigations performed by guardian ad litem at the request of the Probate and Family Court (House, No. 754).

Guardian  
Ad Litem.

By the same member, for the same committee, on a petition, a Bill relative to illegal dumping in the city of Chelsea (House, No. 3184) [Local Approval Received].

Illegal  
dumping.

By Mr. Binienda of Worcester, for the committee on Revenue, on a petition, a Bill relative to excise tax on motor vehicles (House, No. 2300).

Motor  
vehicles,  
excise.

By the same member, for the same committee, on a petition, a Bill relative to the time allowed for local assessors to appeal the valuation of state-owned lands to the Appellate Tax Board (House, No. 2388).

Appellate  
Tax Board,  
appeals.

By the same member, for the same committee, on a petition, a Bill relative to payment agreements for local taxes (House, No. 2463).

Local  
taxes.

By the same member, for the same committee, on a petition, a Bill to clarify the community preservation laws (House, No. 4021).

Community  
preservation  
laws.

By the same member, for the same committee, on a petition, a Bill relative to abatements in the city of Gloucester for fiscal year 2005 (House, No. 4125) [Local Approval Received].

Gloucester,  
abatements.

By the same member, for the same committee, on a petition, a Bill relative to the tax deferral agreements in the town of Princeton (House, No. 4297) [Local Approval Received].

Princeton,  
tax  
deferrals.

By Mr. Cabral of New Bedford, for the committee on State Administration and Regulatory Oversight, on a petition, a Bill placing certain providers of services to the Commonwealth under the ethics law (House, No. 3461).

Ethics  
law.

By the same member, for the same committee, on a petition, a Bill relative to records open to public inspection (House, No. 3484).

Records  
inspection.

By Mr. Wagner of Chicopee, for the committee on Transportation, on a petition, a Bill relative to the use of out-of-state motor vehicle licenses as valid identification (House, No. 2218).

Identification.

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

### *Orders of the Day.*

House bills

Relative to the historic district commission of the town of Sudbury (House, No. 4390); and

Third  
reading  
bills.

Authorizing the Martha's Vineyard Regional High School District to lease certain land (House, No. 4574);

Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed. Severally sent to the Senate for concurrence.

*Recesses.*

Recesses.

At twelve minutes after eleven o'clock A.M., on motion of Mr. Walsh of Lynn (Mr. Donato of Medford being in the Chair), the House recessed until half past twelve o'clock noon; and at that time the House was called to order with Mr. Donato in the Chair.

The House thereupon took a further recess, on motion of Mr. deMacedo of Plymouth, until half past two o'clock and at sixteen minutes before three o'clock the House was called to order with Mr. Donato in the Chair.

The House thereupon took a further recess, on motion of Mr. Rushing of Boston, until half past three o'clock and at four minutes before four o'clock the House was called to order with Mr. Donato in the Chair.

*Paper from the Senate.*

Gang violence.

The Senate Bill reducing gang violence (Senate, No. 2242, amended) came from the Senate with the endorsement that said branch had concurred with the House in its amendment (striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4626), with the following further amendments:

In section 1, in line 20, inserting after the word "auditor" the words "a chief of police appointed by the Massachusetts Chiefs of Police Association", in lines 34 to 39, inclusive, striking out the 2 sentences contained therein therein, in line 50, striking out the word "two" and inserting in place thereof the figure "3", in line 172, inserting after the word "chapter." the following:

"Section 11. The board shall establish a liaison with the United States Marshal's office in order to facilitate the legal processes over which the federal government has sole authority. The liaison shall coordinate all requests for federal assistance relating to witness protection.

The board shall pursue all federal sources that maybe available for implementing this chapter. For that purpose, the board shall establish a liaison with the United States Department of Justice.

The board shall, in conjunction with the executive office of administration and finance and the senate and house ways and means committees, establish procedures to maximize federal funding for witness protection services.", in line 177, inserting after the word "program" the words "including, but not limited to, the number of memoranda of understanding issued by each district attorney pursuant to chapter 263A of the General Laws", and in lines 178 to 200, inclusive, striking out the two paragraphs contained therein (printed as subsection 12) and inserting in place thereof the following two subsections:

"Section 12. Records of the board and all records relating to petitions and filed with the board shall be confidential and shall not be

public records. Section 11A and section 11A½ of chapter 30A shall not apply to meetings, discussions or deliberations of the board.

Section 13. (a) A prosecuting officer may disclose or refuse to disclose the identity or location of a protected witness, or any other matter concerning a protected witness or the program, after balancing the danger such disclosure may pose to the protected witness, the detriment it may cause to the general effectiveness of the program, and the benefit it may afford to the public or the person seeking discovery, except that a prosecuting officer shall, upon the request of a federal, state or local law enforcement official, or pursuant to a court order, disclose to such official the identity, location and criminal records relating to the protected witness when the prosecuting officer knows, knows, or the request from such official indicates, that the protected witness is under criminal investigation for, or has been arrested for, or charged with, a felony.

(b) Whoever, without the express written authorization of the prosecuting officer, knowingly discloses any information received from the prosecuting officer or generated in connection with witness protection services and which poses a risk of harm: to a program participant; of disclosure of any person's participation in such program; or of jeopardizing the objectives of the program shall be punished by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$5,000, or by both such fine and imprisonment. This section shall not apply to: any members of the board; member s of the attorney general's office; members of the district attorneys' offices; law enforcement; or agents thereof, acting in the lawful discharge of their duties."; striking out section 2 and inserting in place thereof the following section:

"SECTION 2. Section 1 of chapter 268, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:—

An indictment or complaint for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury proceedings, the defendant under oath has knowingly made 2 or more declarations, which are inconsistent to the degree that 1 of them is necessarily false, need not specify which declaration is false if: (1) each declaration was material to the point in question and; (2) at least one declaration was made within the period of the statute of limitations for the offense charged under this section. If, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed. It shall be a defense to an indictment or complaint made pursuant to this section that the defendant, at the time he made each declaration, believed each such declaration to be true."; in section 3, in lines 4 to 22, inclusive, striking out the text contained therein and inserting in place thereof the following: "Section 13B. Whoever, directly or indirectly, willfully

(a) threatens, or attempts or causes physical injury, emotional injury, economic injury or property damage to;

(b) conveys a gift, offer or promise of anything of value to; or

Gang  
violence.

(c) misleads, intimidates or harasses another person who is:

(i) a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type;

(ii) a person who is or was aware of information, records, documents or objects that relate to a violation of a criminal statute, or a violation of conditions of probation, parole or bail;

(iii) a judge, juror, grand juror, prosecutor, police officer, federal agent, investigator, defense attorney, clerk, court officer, probation officer or parole officer;

(iv) a person who is or was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type; or

(v) a person who is or was attending or had made known his intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impede, obstruct, delay, harm, punish or otherwise interfere thereby with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type shall"; striking out section 4 and inserting in place thereof the following section:

"SECTION 4. Said chapter 268, as so appearing, is hereby further amended by inserting after section 13C the following section:—

Section 13D. (a) Whoever knowingly distributes or possesses with intent to distribute any transcript of grand jury testimony or any substantially verbatim description of grand jury testimony with the intent to impede, obstruct, delay or otherwise interfere with any criminal proceeding, or the participation of any victim, witness or juror in any stage of a trial, grand jury, or other criminal proceeding, or the continued participation of any person furnishing information to a criminal investigator relating to a violation of any criminal statute, shall be punished by imprisonment in a house of correction for not more than 2½ years or in the state prison for not more than 5 years, or by a fine of not more than \$5,000, or both. Nothing in this subsection shall abridge any right protected by the First Amendment to the United States Constitution.

(b) Nothing in this section shall be construed so as to prohibit any person performing an official function in relation to the grand jury from disclosing a grand jury transcript or description thereof pursuant to Massachusetts Rule of Procedure or Federal Rule of Criminal Procedure 6.

(c) Any attorney representing a defendant in a criminal proceeding, including court appointed counsel, who receives a grand jury transcript or a description thereof related to such proceeding from a prosecutor, may provide the transcript or description to his client or any investigator employed by such attorney or another attorney employed by, or appointed by the court to represent, his client, unless such transfer would be in violation of a protective order from a court of competent jurisdiction. Such attorney may further disclose a grand jury transcript or description thereof related to such proceeding to assist in the legal defense of another defendant in a criminal proceeding, unless such transfer would be in violation of a protective order from a court of competent jurisdiction.

(d) Upon motion of the commonwealth and after hearing, a court may issue a protective order prohibiting defense counsel from distributing grand jury transcripts to a criminal defendant, if the commonwealth demonstrates that the defendant is accused of a violent crime, as defined in section 121 of chapter 140, and that there is a reason to believe, based on specific and articulable facts including, but not limited to, the defendant's past history of violence and the nature of the charges against the defendant, that the defendant poses a threat to a witness or victim. The defendant shall have a right to cross examine any commonwealth witness. In making a determination relative to the issuance of a protective order under this section, the court shall consider whether the defendant has an exceptional need to receive such grand jury transcripts.

(e) Any grand jury transcript or document citing or describing grand jury testimony filed with any court shall be filed and maintained under seal, unless the paper is filed in a criminal prosecution for perjury before a grand jury."; in section 6, in lines 19 and 20, striking out the words "not less than two and"; striking out section 7 and inserting in place thereof the following section:

"SECTION 7. Said section 10 of said chapter 269, as so appearing, is hereby further amended by adding the following 2 paragraphs:—

(n) Whoever violates paragraph (a) or paragraph (c), by means of a loaded firearm, loaded sawed off shotgun or loaded machine gun shall be further punished by imprisonment in the house of correction for not more than 2½ years, which sentence shall begin from and after the expiration of the sentence for the violation of paragraph (a) or paragraph (c).

(o) For purposes of this section, 'loaded' shall mean that ammunition is contained in the weapon or within a feeding device attached thereto.

For purposes of this section, 'ammunition' shall mean cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun."; in section 8, in line 6, inserting after the word "associations" the words "or conduct"; in section 11 (as printed), in item 8000-0038, striking out the figures "750,000" and inserting in place thereof the figures "2,000,000"; striking out section 12; and inserting before the enacting clause of the bill the following emergency preamble:

"Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith reduce gang violence in the commonwealth, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience."

Under suspension of Rule 35, on motion of Mr. deMacedo of Plymouth, the further amendments (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith.

Pending the question on concurring with the Senate in its further amendments, Mr. O'Flaherty of Chelsea moved that the House concur therein with still further amendments striking out section 2 (inserted by further amendment by the Senate) and inserting in place thereof the following section:

Gang  
violence.

“SECTION 2. Section 1 of chapter 268, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:—

An indictment or complaint for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury proceedings relating to an indictment or complaint for the commission of a violent crime, as defined in section 121 of chapter 140, the defendant under oath has knowingly made 2 or more declarations, which are inconsistent to the degree that 1 of them is necessarily false, need not specify which declaration is false if: (1) each declaration was material to the point in question and (2) each declaration was made within the period of the statute of limitations for the offense charged under this section. If, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits to such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed. It shall be a defense to an indictment or complaint made pursuant to this section that the defendant, at the time he made each declaration, believed each such declaration to be true or its falsity was the result of a good faith mistake or error.”; and in section 11 (as printed), in item 8000-0038, striking out the figures “2,000,000” (inserted by further amendment by the Senate) and inserting in place thereof the figures “750,000”.

The still further amendments were adopted.

The House then concurred with the Senate in its further amendments, as amended. Sent to the Senate for concurrence in the still further amendments.

*Order.*

On motion of Mr. DiMasi of Boston,—

Next  
sitting.

*Ordered*, That when the House adjourns today, it adjourn to meet on Monday next at eleven o'clock A.M.

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At four minutes before four o'clock P.M., on motion of Mr. deMacedo of Plymouth (Mr. Donato of Medford being in the Chair), the House adjourned, to meet on Monday next at eleven o'clock A.M., in an Informal Session.